

Ohio EPA 32/36/2022

Entered Director's Journal

Providing a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

By: 

32/36/2022 BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

Received Ohio EPA
Legislative Dec. 16 '22 11:08

In the Matter of:

Valicor Environmental Services, LLC
1045 Reed Road
Monroe, OH 45050

**Director's Final Findings
and Orders**

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Valicor Environmental Services, LLC (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02(G), 3734.13, 3745.01 and Ohio Administrative Code (OAC) rule 3745-50-31.

II. PARTIES BOUND

These Orders shall apply to and be binding upon the Respondent and successors in interest liable under Ohio law. No Change in ownership of the Respondent, or of the Facility, shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Pursuant to ORC § 3734.02(G) and OAC rule 3745-50-31, the Director, by order, may exempt any person generating, storing, treating, disposing of, or transporting hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or comply with other requirements of ORC chapter 3734. Any such exemption shall be consistent

Director's Final Findings and Orders
Valicor Environmental Services, LLC
Page 2 of 5

with and equivalent of rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.

2. Respondent is the prospective purchaser of the assets of Clean Water Environmental LLC, which owns and operates a permitted hazardous waste facility located at 300 Cherokee Drive, Dayton, Montgomery County, Ohio (Facility).
3. Post-acquisition, Respondent will own all the assets of the Facility.
4. The Facility is an "off-site facility" as that term is defined in ORC § 3734.41 and OAC rule 109:6-1-01.
5. ORC § 3734.42(I)(1) provides, in pertinent part, that "[w]hen there is a change in ownership of . . . any off-site hazardous waste treatment, storage, or disposal facility, the prospective owner shall file a disclosure statement with the Attorney General and the Director at least one hundred and eighty days prior to the proposed change in ownership." See also OAC rule 109:6-1-02(A). Under ORC § 3734.42(I)(1), the Director is authorized to disapprove the change in ownership if the Director determines that the disclosure statement or the investigative report contains information that would require a denial of a permit under ORC § 3734.44.
6. On December 15, 2022, Respondent notified Ohio EPA that Respondent intended to enter into a transaction to acquire the assets of Clean Water Environmental LLC. In this correspondence, Respondent also requested an exemption, pursuant to ORC § 3734.02(G) and OAC rule 3745-50-31, from the 180-day pre-notification requirement specified in ORC § 3734.42(I)(1).
7. On or about December 1, 2022, Respondent has contacted the Office of the Attorney General to begin the disclosure statement application process.
8. ORC § 3734.42(I)(3), defines the term "change of ownership" to include "a change of the individuals or entities who own a solid waste facility, infectious waste facility or hazardous waste facility" and does not include "a legal change in a business concern's name when its ownership otherwise remains the same" or "a personal name change of officers, directors, partners, or key employees contained in the disclosure statement." The transaction to purchase the assets of Clean Water Environmental LLC referenced in Finding No. 6. of these Orders, constitutes a "change in ownership" as defined by ORC § 3734.42(I)(3).
9. Respondent shall include an unwind clause in their purchase agreement(s) reflective of the requirement in ORC § 3734.42(I)(2), that provides that "[I]f the parties to a change of ownership decide to proceed with the change prior to the

action of the Director on the disclosure statement and investigative report, the parties shall include in all contracts or other documents reflecting the change in ownership language expressly making the change in ownership subject to the approval of the Director and expressly negating the change if it is disapproved by the Director pursuant to division (I)(1) of this section."

10. Pursuant to ORC § 3734.02 and 3734-50-31, the Director may, by order, exempt any person generating, collecting, storing, treating, or disposing of, or transporting, . . . hazardous waste, . . . in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement under ORC Chapter 3734. Such an exemption shall be consistent with and equivalent to any regulations adopted by the Administrator of the United States Environmental Protection Agency under the "Resource Conservation and Recovery Act of 1976," 90 Stat. 2806, 42 U.S.C.A. 6921, et seq., as amended.
11. Pursuant to ORC § 3734.02(G) and 3734-50-31, the Director has determined that issuance to the Respondent of an exemption from the requirement to submit an environmental background disclosure statement at least 180 days prior to the proposed change in ownership referenced in Finding No. 6. of these Orders is unlikely to adversely affect public health safety or the environment.

V. ORDERS

1. The Respondent is hereby exempted from the 180-day deadline for the filing of a disclosure statement prior to the date of the proposed change in ownership, as required by ORC § 3734.42(I)(1) and OAC rule 109:6-1-02(A). Respondent must still comply with all other requirements in ORC § 3734.42 and OAC rule 109:6-1-02.
2. Except as otherwise expressly provided herein, the Respondent shall comply with all other applicable requirements of ORC § 3734.42 and the rules promulgated thereunder, as well as OAC Chapter 109:6-1.
3. The Director may revoke these Orders for Respondent's failure to comply with any of these Orders or a determination that Respondent's activities at the Facility adversely affect public health or safety or the environment.
4. The issuance of these Orders by the Director does not release Respondent of any liability it may have incurred for any violations which may have occurred at the Facility prior to the effective date of these Orders. The issuance of these Orders does not release Respondent from any obligation it has to comply with the State

of Ohio's environmental laws, except as otherwise specifically provided herein.

5. These Orders do not exempt Respondent from any other local, state, or federal laws or regulations which are otherwise applicable.

VI. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Facilities.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

VIII. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section IX. of these Orders.

IX. WAIVER

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

X. EFFECTIVE DATE

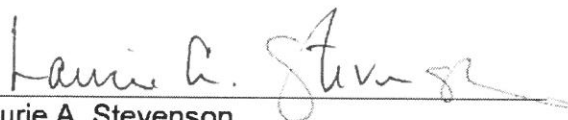
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XI. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED:

Ohio Environmental Protection Agency


Laurie A. Stevenson
Director

IT IS SO AGREED:

Valicor Environmental Services, LLC


Signature

12/13/2022
Date

Kenneth E. Bentfeld
Printed or Typed Name

Senior Vice President
Title

